No. 623

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WM. R. STAN

In the Supreme Court of the United States

OCTOBER TERM, 1925

YU CONG ENG and CO LIAM for themselves and for the benefit of all other persons similarly situated and affected,

Petitioners,

against

W. TRINIDAD, as Collector of Internal Revenue, EULOGIO P. REVELLA, as Fiscal for the City of Manila, and PEDRO CONCEPCION, as Judge of the Court of First Instance of Manila,

Respondents.

On Writ of Certiorari to the Supreme Court of the Philippine Islands.

BRIEF ON BEHALF OF RESPONDENTS

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TABLE OF CONTENTS

	PAGE
The Facts—	
Nature and History of this Case	1
Important Philippine Statutes	3
The Purpose of Act No. 2972	4
The Necessity for the Enactment of Act No. 2972, for the Protection of the Revenues	6
Defects in Petitioners' Proof	11
The Weight of Evidence is Against the Petitioners' Claim of Hardship	12
Summary of Argument	15
Argument:	
I. The Interpretation of Act No. 2972 by the Supreme Court of the Philippines is controlling under the circumstances in this case	18
II. Act No. 2972 is not a deprivation of liberty or property without due process of law	23
III. Act No. 2972, as limited by the Supreme Court of the Philippine Islands, does not offend against the equal protection clause either in language or in operation	27
IV. Act No. 2972, as limited by the Supreme Court of the Philippine Islands, is sufficiently definite and certain in its requirements	32
V. The Treaty between the United States and China, assuring the Chinese Nationals "most favored nation" treatment, has no bearing on this case	34
VI. Act No. 2972 is a proper exercise of the taxing power and of the police power	36
Conclusion	37

TABLE OF CASES

PAGE

Adams v. Tanner, 244 U.S. 590 26
Barclay and Co. v. Edwards, 267 U.S. 442, 450 ..... 30, 36
Barbier v. Connolly, 113 U.S. 27 25
Brown v. New Jersey, 175 U.S. 172, 174 23
Brushaber v. Union Pac. R. R., 240 U.S. 1 ..... 25, 26
Capital City Dairy Co. v. Ohio, 183 U.S. 238 23
Child Labor Tax Case, 259 U.S. 20 25
Coppage v. Kansas, 236 U.S. 1 26
De la Rama v. De la Rama, 201 U.S. 303, 309, 313 19
Dobbins v. Los Angeles, 195 U.S. 223 25
Dorr v. United States, 195 U.S. 138 23
Federal Trade Commission v. Lorillard Co., 264 U.S. 298, 306 20
French v. Barber Asphalt Paving Co., 181 U.S. 324 ..... 25, 27
Gould v. Gould, 245 U.S. 151 20
Green v. Frazier, 253 U.S. 233 31
Harriman v. Interstate Commerce Commission, 211 U.S. 407, 422 20
Hill v. Wallace, 259 U.S. 44, 70 20
Loan Association v. Topeka, 20 Wall. 655, 663 36
Londoner v. Denver, 210 U.S. 373, 379 22
McCulloch v. Maryland, 4 Wheat. 316 36
Meyer v. Nebraska, 262 U.S. 390 ..... 26, 30
Murray v. Hoboken Land, etc., Co., 18 How. 272 23
Oceanic Steam Navigation Co. v. Stranahan, 214 U.S. 320 22
Packard v. Banton, 264 U.S. 140 ..... 25, 30, 31
Philippine Sugar Co. v. Philippine Islands, 247 U.S. 385, 390 22
Pierce v. Society of Sisters, 268 U.S. 510 26
Pierce Oil Corp. v. Hopkins, 264 U.S. 137 32
Porterfield v. Webb, 263 U.S. 225 29
Radice v. New York, 264 U.S. 292 25
Reavis v. Fianza, 215 U.S. 16 19
Roura v. Government of the Philippine Islands, 218 U.S. 386 19
Royster Guano Co. v. Virginia, 253 U.S. 412, 415 ..... 30, 31
Serra v. Mortiga, 204 U.S. 470, 474 23
Sioux City Bridge Co. v. Dakota County, 260 U.S. 441 36
Soon Hing v. Crowley, 113 U.S. 703, 710 ..... 28, 29, 31

PAGE

Southeastern Express Co. v. Robertson, 264 U.S. 535 32
Strong v. Repide, 213 U.S. 419, 429 4
Takao Ozawa v. United States, 260 U.S. 178 19
Terrace v. Thompson, 263 U. S. 197 ..... 29, 31
The King v. Lau Kiu, 7 Haw. 489 30
Truax v. Raich, 239 U.S. 33 26
United States v. Field, 255 U.S. 257 20
United States v. Sweet, 245 U.S. 563, 572, 573 20
Yick Wo v. Hopkins, 118 U. S. 356 ..... 28, 35
Young v. Rafferty, 33 Phil. 556 7

Act of Congress declaring Status and Government for P. I. (39 Stat. 545) 23, 24, 36
Revenue Act of 1918, Public No. 254, 65th Congress, Section 1305 33
Revenue Act of 1921, Public No. 98, 67th Congress, Sections 1300 and 1303 33
Revenue Act of 1924, Public No. 176, 68th Congress, Section 1002 33
Revenue Act of 1926, Public No. 20, 69th Congress, Section 1102 (a) 33
Regulations 45, relating to income tax, etc., under the Revenue Act of 1918, Article 24 34
Regulations 62, under Revenue Act of 1921, Articles 24 and 1711 34
Regulations 65, relating to income tax under Revenue Act of 1924, Articles 24, 1321, 1611-18 34

Ehrlich: Montesquieu and Sociological Jurisprudence, 29 Harv. Law. Rev. 582, 592 22

Treaty with China, 1880 34

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BRIEF ON BEHALF OF RESPONDENTS

THE FACTS.

History of this Proceeding.

This case comes to the Supreme Court on a writ of certiorari to review a decision of the Supreme Court of the Philippine Islands denying a petition for prohibition and injunction against the enforcement by criminal prosecution of Act No. 2972 of the Philippine Legislature. The Act was attacked as uncon-

stitutional, but the Supreme Court of the Philippine Islands upheld it.

The history leading up to this case is as follows: For many years certain of the authorities of the Philippine Islands have felt that the lack of a common language and literature was a serious handicap to intellectual and commercial development. The Court below (R. 1181) discusses the statutory history of the "attempt to hasten the adoption of a common language" and mentions some of the difficulties "which have beset it." On October 16, 1920, the then Governor General, in a message to the Legislature, recommended "legislation as already approved by the Senate * * * that all business houses keep their books in English or Spanish or in any one of the local Philippine dialects, in order to avoid wholesale frauds upon the public revenues." (R. 1068, 1069.)

Accordingly, Act 2972 was passed by the Philippine Legislature and approved February 21, 1921. It reads as follows:

> "NO. 2972. AN ACT TO PROVIDE IN WHAT LANGUAGE ACCOUNT BOOKS SHALL BE KEPT, AND TO ESTABLISH PENALTIES FOR ITS VIOLATION.
>
> *"Be it enacted by the Senate and House of Representatives of the Philippines in legislature assembled and by the authority of the same:*
>
> "Section 1. It shall be unlawful for any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to keep its account books in any language other than English, Spanish or any local dialect.
>
> "Section 2. Any person violating the provisions of this Act shall, upon conviction, be punished by a fine of not more than ten thousand pesos, or by imprisonment for not more than two years or both.
>
> "Section 3. This Act shall take effect on November first, Nineteen Hundred and Twenty-one.
>
> "Approved, February 21, 1921."

It will be noted that the Act was to take effect by its own terms on November 1, 1921. Later on, however, it was amended as to the effective date by Act No. 2998, and actually it took effect on January 1, 1923. As a matter of fact, however, due

to efforts to have the Act repealed, its enforcement seems to have been suspended until the adjournment of the Legislature in February, 1923. (R. 1160.) Accordingly, the Act was not enforced for a period of a little more than two years after its approval.

On March 7, 1923, the City Fiscal of the City of Manila commenced Criminal Case No. 25551, by causing an information to be filed against Yu Cong Eng, one of the petitioners herein, for violation of Act 2972 (R. 13, 1161). This defendant, joining with him one Co Liam, filed a petition in the Supreme Court of the Philippine Islands asking for a relief in the nature of a writ of prohibition which should require that the respondents in that proceeding, that is, the Collector of Internal Revenue, the City Fiscal of Manila, and the Judge of the Court of First Instance, should desist and refrain from further action in such case against the Petitioner Yu Cong Eng, and from instituting or prosecuting any other criminal actions under Section 2972, on the ground that such Act was unconstitutional. From the decision of the Supreme Court of the Philippines, denying the relief sought by the petitioners, holding that the Act was constitutional and valid, and interpreting the Act as meaning by the phrase "books of account" such books as are required by the regulations of the Bureau of Internal Revenue to be kept for taxation purposes, a writ of certiorari was granted by this Court.

Important Philippine Statutes.

There are two tax laws in effect in the Philippine Islands from which a substantial part of the revenue of the Islands is derived. There is a sales tax on the gross sales of certain businesses and occupations. A quarterly return is required, showing the amount of receipts or earnings, and a tax of one and a half per cent is due on the gross value of the goods sold, etc., based on the actual selling prices. (Administrative Code, Sections 1453, etc., Act 3065, R. 1162.) There is also an income tax. (R. 1162.) The revenue accruing from the sales tax is roughly ten million pesos annually, and from the income tax, about two million pesos. (R. 1163.)

Another statute referred to by the court below is the so-called Code of Commerce, such part of which as is in effect having

been carried over from the old Spanish Code. Art. 33 of that Code provides that all merchants shall keep,

(1) A book of inventories and balances,
(2) A day book,
(3) A ledger,
(4) A copy book of telegrams, letters, etc.,
(5) Such other books as may be required by special laws.

Moreover, under the provisions of the Code of Commerce and Internal Revenue law, the Commissioner of Internal Revenue had authority to require the keeping of daily records of sales, (R. 1163) and further had the power to make regulations prescribing the manner in which the proper books, invoices and other papers should be kept and entries made therein by the persons subject to the sales tax. (R. 1164, Act No. 2339, Sections 5, 6; Administrative Code, Section 1424 (j)).

The Purpose of Act No. 2972.

It would seem that only from a very superficial and perhaps even disingenuous reading of the Record, is it possible to conclude that the purpose of Act 2972 was anything other than what it purported to be. It is an Act in aid of the administration of the Revenue Laws and of the collection of taxes. It is conceived that in a case like this, where the Supreme Court of the Philippine Islands made no separate findings of fact and conclusions of law, the statements of fact found in the opinion are to be taken as facts found by the Court. *Strong v. Repide,* 213 U.S., 419, 429. At pages 1183-1184 of the Record the Court below says:

> "The purpose of the Legislature in enacting Act No. 2972 is disclosed by the decision of this Court in *Young v. Rafferty, supra,* (33 Phil. 556) by the Messages of the Governor-General, by the hearings before the Committees of the Philippine Legislature, and by other sources. All these indicate that the Act is a fiscal measure intended to facilitate the work of the Government agents and to prevent fraud in the returns of merchants, in conformity with the sales tax and the income tax."

The contention of counsel for the Petitioners on this appeal, as exemplified by their statement at the top of page 34 of their

brief, that the real purpose of Act 2972 was the destruction of the Chinese merchants of the Philippine Islands, finds no slightest warrant in the Record.

True, indeed, one of the proponents of the law intimated that if the Chinese were driven out of business, the Filipinos would take their places. (R. 986; Petitioner's brief, p. 11.) But a reading of the context shows that what was being debated was not the original law, but amendments to that law, which, as the proponents of Act 2972 considered, weakened it materially. The statement was an answer to questions suggesting that the amendments were necessary to protect the interests of Chinese merchants.

On page 38 of petitioners' brief there is quoted a statement by the Collector of Internal Revenue, supposed to indicate that Act 2972 was not intended as a fiscal measure. (R. 608.) It was made by him in the course of a cross-examination in which the then attorney for the petitioner was attempting to embarrass the witness by showing, either that he was coerced by the Governor-General into helping with the drafting and passage of an amendment to Act 2972 in which he himself did not believe, or else, that the Collector had himself believed in the unpopular Amendment. The explanation of the Collector's statement is found in his idea that Act 2972 would be in aid, not only of the Bureau of Internal Revenue, but of the insular treasury in its inspection of insurance companies and banks, and of the police officers in their inspection of the records of hotels and pawn shops. (R. 608-609.)

These statements are the only support found by petitioner's counsel for the sweeping allegations in their brief in this Court that Act 2972 involved a deliberate design on the part of the Legislature of the Philippine Islands to drive out of business the Chinese merchants in the Islands by the subterfuge of a law requiring the keeping of books in certain languages.

There appear in the record transcripts of parts of the debates occurring in the Philippine Legislature at the time when the proposed amendment restricting the effect of Act 2972 was under consideration. In these debates there is apparent some feeling against the Chinese merchants. Perhaps the best explanation of this feeling is found in the statements of Sr. M. Jesus Cuenco,

Chairman of the Committee on Revision of Laws, in his report to the Philippine House of Representatives, dated Feb. 14, 1923. (R. 1065.) He states that after the passage of Act 2972, the Chinese merchants sent delegates to America, where they not only tried to show the supposed injustice of the Act, but questioned the capacity and judgment of the Philippine Legislature in a censurable manner (R. 1069); but there is not in the entire record a scintilla of evidence to show that Act 2972, recommended by an American Governor-General (R. 1167), strenuously supported by the representatives of the Bureau of Audits and of the Bureau of Internal Revenue of the Islands (R. 1070, 923), and passed by the Legislature of the Philippine Islands after extensive debates, had any other purpose than to cure a material defect in the administration of the revenue laws of the Islands. Indeed, the Collector of Internal Revenue and the later Acting Collector of Internal Revenue, Messrs. Trinidad and Posadas, stated over their signatures that the law was necessary in order to protect the revenues of the Government (Ex. 3, R. 1017-1018). Mr. Posadas was of the opinion that,

> "due to the books of the Chinese merchants being unintelligible on account of the language in which they are written, the public treasury is defrauded in several millions of pesos every year;" (R. 1070, 940-941.)

The Necessity for the Enactment of Act 2972 for the Protection of the Revenues of the Philippine Government.

The recommendation of the Governor-General of the Philippine Islands of October 6, 1920, suggesting the passage of such an Act as No. 2972, was brought about, according to the report of the Committee on Revisions of Laws, dated February 14, 1923, by the fact that the Supreme Court of the Philippines had held invalid a regulation issued on October 8, 1914, by the Director of the Bureau of Internal Revenue compelling all merchants to keep certain books in English or Spanish. This decision was based on the proposition that the Collector had no authority in law for the making of such a regulation, and the Supreme Court carefully guarded itself against expressing any opinion as to the validity of any such regulation, if and when passed as an act of the Legislature. The report of the Committee, referring to

this decision of the Philippine Supreme Court in *Young v. Rafferty*, 33 Phil. 556, states:

> "This on the one hand, and the false declarations made by many Chinese merchants in their income tax returns on the other, induced some members of the Legislature to present in different periods in the interests of the Government, bills whose object was to require that the books of merchants be kept in English or Spanish."

Perhaps more than anything else, however, Exhibits X and X-1, provided this Court considers them admissible in evidence and entitled to its consideration, indicate the results of the inability of the Bureau of Internal Revenue to check up the books of Chinese merchants. (R. 1117-1119.) The history of these two Exhibits is a curious one. Paragraph XIV of the amended petition alleges that the 12,000 Chinese merchants—

> "* * * as shown by the records of the Internal Revenue Department, presided over by the respondent, W. Trinidad, now pay and for many years last past have been paying more than 60 per cent of the taxes levied on the total mercantile transactions of the Philippine Islands, thereby conclusively demonstrating that the said Chinese merchants faithfully and honestly record their business transactions in their own language, * * *" (R. 106.)
>
> (See R. 62, ff., 947-8, 1119-22, 1134, 1141, for the history of these two exhibits.)

What they show is illuminating. In the year 1918, the Chinese merchants who are alleged in the petition and shown in the proof to be doing some 60 per cent of the total mercantile business of the Philippine Islands paid but 39 per cent of the sales taxes and were assessed only 16 per cent of the total penalties under the Sales Tax Law; that, in 1922, the Chinese merchants again paid 39 per cent of the sales taxes and were assessed a startlingly low amount totaling but 8 per cent of the penalties under the Sales Tax Law.

Under the Income Tax Law, in 1918, the Chinese merchants paid 20 per cent and, in 1922, they paid 16 per cent.

The strenuous effort of the trial counsel for the petitioners to keep this testimony out of the case after they had intimation as to what its effect would be, and particularly after they had seen it, is the measure of its importance in their eyes.

The record contains many statements showing the difficulty of examining books kept in Chinese characters and the consequent impossibility of checking up in any way the accuracy of the returns for the sales tax and the income tax submitted by Chinese merchants. Both Mr. Trinidad, the Collector of Internal Revenue at the time this proceeding was begun, and Mr. Posadas, later the Acting Collector of Internal Revenue, testified that it was impossible to secure competent Chinese accountants capable of making an inspection of the books of Chinese merchants. Thus, at page 620 of the record, Mr. Trinidad, under cross-examination, testified that the head of the department "can find all the men he needs to inspect the books kept in local dialects, while he cannot find the number of men needed to inspect the books kept in Chinese characters." Mr. Posadas stated (R. 691) that the Bureau of Internal Revenue had only an insignificant number of Chinese accountants. In Exhibit 3 (R. 1018), Trinidad and Posadas stated over their signatures that out of seventeen Chinese accountants employed up to date (Sept. 22, 1921) "five were discharged for graft, seven resigned or were forced to resign, for either unsatisfactory services rendered or for suspicion of graft, and one deceased. In spite of this number of accountants employed, only very little number of Chinese books have been investigated and audited, and in the majority of them, under-declarations of sales or receipts have been found * * *."

In this communication, Trinidad and Posadas also said that Act 2972 was necessary in order to protect the revenues of the Government.

Posadas stated at page 695 of the Record:

> "While the Bureau at present can discover errors or omissions or differences which appear in the tax returns of taxpayers who keep their books in a language intelligible to the office, we can not do the same so far as concerns other merchants who keep their books in other languages, in view of the fact that we have not the proper personnel for that work. We can only examine a small number of the books of account of the Chinese."

He stated further that to the best of his knowledge "no Filipino agent of the Bureau of Internal Revenue knows Chinese or can read or write it." The inspections that the Filipino agents make

in the Chinese establishments are limited solely to comparing the sales book of the Bureau of Internal Revenue, which is kept in Arabic characters, with the books kept in Chinese characters, having one of the Chinese read the different entries which appear in the Chinese books in order to compare them with the entries which appear in the sales book in Arabic characters, but this inspection is very difficult and it is not so efficient as if the Filipino inspectors could inspect and compare these books themselves. (R. 698.) Indeed, during the entire year 1922, there were only 477 books of Chinese merchants inspected by the Chinese accountants in the Income Tax Division (R. 697), and, in these inspections, under-declarations in transactions amounting to more than 600,000 pesos were discovered (R. 698). The necessity for Act 2972 is found not only in the fact that there are Chinese merchants in the Philippine Islands, keeping their books in Chinese characters, but also in the fact that there are other books kept not only in English and Spanish, but in Japanese and Hindu (R. 709). There are also German and Syrian merchants. (Ex. 3, R. 1018.)

The difficulty of obtaining competent Chinese accountants is pointedly emphasized by the fact that out of 80 agents and inspectors engaged in the inspection and audit of books outside Manila, in addition to other employees engaged in special work, there is only one man of Chinese nationality (R. 716). Accordingly, in many cases Chinese books from the provinces outside Manila have to be forwarded to the Manila office for inspection (R. 718 to 719). This practice, of course, is limited to the books of Chinese merchants, because Filipino inspectors can readily inspect the books kept in the various dialects (R. 719), and the reason for bringing in the Chinese books is the shortage of Chinese accountants in the provinces (R. 720).

Perhaps the strongest statement of the policy underlying Act 2972 is found in the statement of Mr. Posadas, at page 723 of the record, which is so clear and forceful as to warrant quotation. He says:

> "The advantage of the Accounting Law, which compels merchants to keep their books in English, Spanish, or some local dialect, lies precisely in the fact that it would facilitate the inspection of these books of account by the employees

of the Bureau of Internal Revenue, and enable them to check up the taxes which have been paid by the merchants and ascertain whether or not they agree with the transactions actually had. This work is at present being done so far as concerns the merchants who keep their books in languages comprehensible to the Bureau, and to a certain extent it means that these merchants are penalized. On the other hand, it has been almost impossible to do this with regard to those merchants who keep their books entirely in languages not comprehensible to the office, and the net result therefore is that while we can collect differences in taxes due from part of the merchants, it is almost impossible to do so with regard to the other part."

Again, Mr. Posadas assigns as the reason for this situation the fact that the Bureau has never been able to get a sufficient number of competent Chinese employees to make the inspections of the books of account of the Chinese (R. 724). He points out, morover, that in the efficient collection of taxes, the most important part of the work consists in the inspections made in the field by these very agents, assistant agents, and examiners (R. 726), whose inability to understand Chinese books effectually ties their hands.

Nothing could more clearly show the difficulties met by the Bureau of Internal Revenue than the strained attempt of the trial attorney for the petitioners to show on cross-examination that by having an entire duplicate personnel in every Internal Revenue district in the Islands—practically two men for each job—the Bureau would be able successfully to inspect and check up the books of these Chinese merchants (R. 734)—provided, that is, that a sufficient number of Chinese accountants should by some miracle suddenly become available.

It was suggested by one of the witnesses for the petitioner that competent Chinese accountants, if not available in the Islands, could be readily obtained in China. Mr. Jesus Obieta, Deputy Collector of Customs, charged with the enforcement, among other things, of the Chinese exclusion act (R. 814-15), pointed out that Chinese, except members of the so-called exempt classes, that is, merchants, teachers, students, officials of the Chinese Government, and visitors upon sightseeing or pleasure trips, are not permitted to enter the Philippine Islands. Chinese bookkeepers or accountants are excluded. (R. 814, 816.)

Defects in Petitioners' Proof.

The record fails to substantiate the contention of the petitioners that, if Act 2972 were enforced, the Chinese merchants would be virtually driven out of business. Indeed, the evidence suggests not only that it would have been readily possible for them in the interval between the passage and effective date of the Act to prepare for compliance with its terms without undue difficulty, but also that though up to the present they have made no effort to comply, nevertheless the hardship upon them even now would be temporary and comparatively inconsequential.

The petitioners' case is devoid of proof from which, if it could be assumed that hardship to a great number of the Chinese merchants is to be a controlling factor, it can be ascertained how many of the Chinese merchants would suffer any hardship whatsoever.

It will be remembered that the Sales Act contains an exemption from taxation of persons doing less than a certain minimum business.

Exhibit G., R. 957, indicates that among the 8445 retail Chinese merchants in the Islands, the average amount of sales per annum is 5446.40 pesos. There is absolutely nothing, however, to show how many of these retail merchants make gross quarterly sales of less than 200 pesos, nor how many of them come within the other exceptions creating classes exempt from the Sales Tax Law, (Section 1457, 1459, Administrative Code of the Philippine Islands, 1917). There is nothing in the petitioners' proof to show how many of the Chinese merchants are subject to this exemption, nothing whatsoever to show how many of them are exempt from making an income tax return or from paying the tax.

There is nothing to show how many of the Chinese merchants could readily afford to employ a bookkeeper capable of keeping their books in the languages prescribed by the Act, and how many would suffer hardship by being compelled to do so; nor, if any would suffer hardship, how serious a hardship it would be.

As to the Chinese merchants of moderate incomes, there is again nothing to indicate how many of them would need a bookkeeper, nor how much of a bookkeeper's time they would need, nor how many would be unable to afford a bookkeeper on whole

or part time, or would suffer hardship by being compelled to comply with the law.

As to all these classes of merchants, there is nothing but conjecture on behalf of petitioners how many of them are able at the present moment to understand enough English, Spanish, or one or more of the native dialects, to enable them to understand their books if kept in those languages. Petitioners guess only one per cent. Respondents claim two-thirds (R. 1170), and the latter claim is supported by actual investigation and test, as hereafter shown. Petitioners give no proof to show how many or how few of them have employees already competent to keep books in those languages—and of course nothing to show whether by a serious effort during the two years between the enactment and effective date of Act 2972 these merchants or their employees could not readily have learned sufficient of one of the specified languages to enable them to keep their books. The burden would naturally be proportionate to the simplicity or complexity of the books, and that—to the size of the business.

It should be noted that W. W. Larkin, one of the petitioners' witnesses, states that Chinese books are kept on the same system as ours. (R. 519.)

It is submitted that the petitioners' proof is so vague and general that, on all points above mentioned, it would be utterly impossible for a court to draw any definite conclusion as to the extent of hardship on any given number of Chinese merchants, in case Act 2972 were enforced, or to find, in fact, that any real and serious hardship did exist. The petitioner's brief in this court indeed consists, in so far as these points are involved, of a series of conclusions based on assumptions not found in the record.

The Weight of Evidence Negatives in Large Part, at Least, Petitioners' Contention That the Act would Produce Hardship Amounting to Confiscation.

The books kept by the vast majority of the smaller Chinese merchants, tienda keepers and tradesmen, are of an exceedingly simple nature (R. 158). It will be noted, however, that a number of the Chinese witnesses for the petitioners testified on cross-examination that they kept their own books, that they had had

no education in bookkeeping, but a general Chinese education, and that the mere studying of Chinese courses in the schools they attended amounted to a sufficient education to enable them to keep their simple books. Certainly, it is natural enough to suppose that a small shopkeeper could get along with very simple books indeed, like the petitioners' witness Go Sin Chong, who keeps one book himself. (R. 271.)

One of the most illuminating witnesses on this subject was Vicente Fabella, public accountant and Dean of the Jose Rizal College and himself a teacher of accounting. His college is evidently one of high standing, his courses being recognized by such Universities as Harvard, Michigan, New York, Northwestern, etc. (R. 556-558). He testified that he was familiar with the sari tienda business (R. 558); that for such a small business no trained bookkeeper is required; that a mere clerk with a second grade education in arithmetic could keep books for so simple a business (R. 560, 580, 633). In effect, he testified, what everyone knows of common knowledge, that in the case of a single proprietorship with a small to moderate sized business, the owner quite commonly disregards books altogether and knows what is going on without them. See also the testimony of H. A. Bordner, Superintendent of Schools of Manila (R. 633, 636-7, 639); Domingo Dikit, Chief of the Provincial and Municipal Department, Auditor's Office and Secretary-Treasurer of the Bureau of Accountancy of the Philippine Islands, and also a certified public accountant (R. 638-9, 650, 662).

L. N. Heras, President of the Chamber of Commerce of the Philippine Islands, head of an importing and exporting business, with a steamer under charter, and vice-president of three other companies, testified that in his business of buying and selling copra, rice, gasoline and petroleum, he employs a bookkeeper only for from half an hour to an hour one or two days a week (R. 675) and that any young man who knows arithmetic can keep simple books for a small-sized business after three or four months practice (R. 677; 683-5).

Moreover, there is a great amount of testimony to the effect that a majority of the Chinese, perhaps a great majority, understand enough of the languages specified in Act No. 2972 so that it would not be difficult for such of them as have small businesses

to keep the requisite simple books themselves or to understand them if kept by Filipino bookkeepers. The Chinese bookkeeping system is the same as ours. (R. 519.) The necessary books for these small businesses are very simple. The Chinese merchants, even now, make out their sales tax forms in Arabic numerals, and in many cases their invoices, duplicates of which are the sources of information for their bookkeepers, are made out in Spanish or English. (R. 157, 210, 223-4, 692-3; Ex. 2, R. 705; R. 821-3.)

There is much evidence, moreover, that a great number of Chinese merchants, not only in Manila, but throughout the provinces, already understand a considerable amount of English, Spanish, or one or more of the native dialects. Investigations by various agents of the Bureau of Internal Revenue show this conclusively. (R. 831-3, 838, 840-41, 847-8, 850, 856, 863-65, 866-7, 877, 887, 900, 902, 904-7, 1070.)

One of the petitioners' points most strongly urged, is that there are not sufficient available bookkeepers in the Islands to enable the Chinese merchants to comply with the law.

In the first place, there is sufficient in the record to bear out the assumption, which might naturally be made as matter of common knowledge, that the simple books of such small merchants as could not afford to hire a trained bookkeeper could readily be kept by the use, for only a few hours during the week, of some young man simply trained in arithmetic.

Mr. Fabella testified that there was no shortage of bookkeepers and that he had many unfilled applications for positions as such in his office. (R. 569.)

He testified that in the four years during which his college has been in existence he had graduated 1,000 persons, any one of whom, after a summer course of six weeks, could keep books for a tienda. (R. 560.)

There is considerable testimony as to the number of trained bookkeepers graduated in the Islands (R. 595) and there is evidence, in addition to that of Mr. Fabella, by persons well qualified to know, that there is an excess of trained bookkeepers in Manila and in the Islands (R. 649, 666). Furthermore, Exhibit 7C (R. 1027) shows a total of 2994 persons who passed a first grade Civil Service examination, including arithmetic, and 14,051

who passed the second grade, and could readily learn to keep simple books (R. 580). The petitioners, in other words, have completely failed to show that there is any shortage of persons in the Philippine Islands competent to take care of books of the Chinese merchants, and qualified for such bookkeeping, according to the difficulty and complexity of the books which they might be required to keep. Their non-compliance suggests inertia rather than inability.

The uncontradicted evidence shows that beyond holding a meeting at which it was concluded that no effort to comply with the law could be made (R. 484), the Chinese in the Islands have made no effort, in the time elapsing between the passage and effective date of the law, to prepare themselves for complying with it. This is true of the petitioner Yu Cong Eng. (R. 160. See also R. 172, 253, and the testimony of other Chinese witnesses.)

It is perhaps worth noting, moreover, that in a considerable number of other countries, laws substantially similar to Act 2972 have been passed and are in force. (R. 1031-1054, inclusive.)

SUMMARY OF ARGUMENT

I. The interpretation of Act 2972 by the lower court is controlling here.

A. The lower court's findings as to the purpose of the Act, its history, and the mischief it was designed to cure will be adopted by this Court.

1. Such findings, unless totally unsupported by evidence, will be adopted.

2. There is abundant support in the Record for them.

3. The Act, then, is to be deemed what the lower court declared it, a fiscal measure in aid of the revenue laws.

B. The lower court properly interpreted the Act with reference to its purpose.

1. The phrase "books of account" in the Act requires definition.

2. Petitioners cannot object to the court's method of interpretation when it does not extend the scope of the Act, but limits it.

3. It is the duty of a court so to interpret an act, if possible, as to remove constitutional doubts.

C. The lower court was bound to interpret the Act in accordance with existing law in the Philippines.

1. This practice is established by the authorities, and the wording of Act 2972 particularly justifies it.

2. The court considered the policy of the Islands as regards a uniform language, and the local legislation.

D. Particularly is the lower court's interpretation binding because its effect is to cure constitutional difficulties.

1. A state court's interpretation is binding when the law suggests no conflict with Federal law or Constitution; persuasive even when it does so.

2. But when the interpretation validates the law, this court will adopt it.

3. This is true even though such interpretation amounted to judicial legislation.

II. Act 2972 is not a deprivation of liberty or property without due process of law.

A. The phrase "due process of law" takes its meaning with reference to the body of law of the jurisdiction.

1. Effect of limitations in Federal Constitution within the Philippine Islands.

2. Philippine Bill of Rights.

3. The meaning of "due process" is to be sought for in the light of the body of law as found in the Philippine Islands.

B. If the Act works injury to anyone, such injury is purely incidental.

1. The Act prohibits no occupation—prevents no one from doing business. The record does not establish petitioners' claim of hardship.

2. The Act being a fiscal measure, any injury or hardship caused by it must be purely incidental. And incidental injuries do not render an otherwise valid act unconstitutional.

3. Even grave injury to property will not invalidate an act, unless it amounts patently to confiscation.

4. Petitioners' cases distinguished.

C. The requirement of "due process" is not a limitation on an otherwise valid exercise of the power of taxation.

1. The "due process" clause was not designed to limit or take away the power of taxation exercised by the Congress or by the states.

III. Act 2972 does not violate the "equal protection" clause either in language or in operation.

A. Neither the wisdom of the Act nor the hidden motives of the legislature are material.

1. The purpose of the Act as a fiscal measure is patent from the record and established by the Court's opinion.

2. The fact that the keeping of books by Chinese and other merchants in their own languages, incomprehensible to the tax authorities, was the impelling necessity for the Act cannot be ground for unconstitutionality.

3. Authorities for the above proposition.

4. There is no indication of unfairness or discrimination as regards the operation of the Act.

B. The requirement of equal protection forbids, not classification, but only arbitrary classification.

1. Classification as such is not forbidden, and a classification substantially identical with that created by Act 2972 has been held valid.

2. The test is arbitrariness, not mere unreasonableness.

3. Petitioners' cases distinguished.

4. The classification found in Act 2972 is broad and is reasonable. That it bears harder on some persons than on others is immaterial.

5. Any reasonable basis for the classification of an act is enough.

6. Facts indicating the reasonableness of the classification in Act 2972.

IV. Act 2972 as limited is sufficiently definite and certain in its requirements.

1. If the Act was indefinite as passed, it has certainly been cured of this defect by the lower Court's construction and is now completely definite.

2. It is no less definite than various Revenue Acts passed by Congress or the Regulations of the Federal Bureau of Internal Revenue.

V. The treaty between the United States and China has not the remotest bearing on this case.

1. Analysis of the treaty provisions with reference to Act 2972.

2. Petitioners' cases distinguished.

VI. Act 2972 is a proper exercise of the taxing power and of the police power.

1. General power of taxation of the Philippine legislature under the Organic Act.

2. Summary and conclusion.

ARGUMENT

I.

THE INTERPRETATION OF ACT 2972 BY THE SUPREME COURT OF THE PHILIPPINES IS CONTROLLING UNDER THE CIRCUMSTANCES OF THIS CASE.

A.

The Lower Court's Findings as to the Purpose of the Act, its History and the Mischief it was Designed to Cure will be Adopted by This Court.

The findings made by the court in its opinion are matters of fact, or at least, it is submitted, matters of mixed fact and law and will be accepted by this Court unless the conclusion should be reached that there is absolutely no evidence upon which they could be based.

De la Rama v. *De la Rama*, 201 U. S. 303, 309, 313.
Reavis v. *Fianza*, 215 U. S. 16, 21.

Moreover, of course, the Supreme Court will not go outside the Record for the issues and the facts.

Roura v. *Government of the Philippine Islands*, 218 U. S. 386, 400.

That there is abundant foundation in the evidence for the findings of the Supreme Court of the Philippine Islands on these points has been, it is submitted, demonstrated in the foregoing discussion of the facts. The fact that a number of bills designed to cure the leakage in revenues caused by the inability of the Bureau of Internal Revenue to examine the books of the Chinese, the recommendation of Act 2972 by an American Governor General, its support by the Bureau of Audits and by the Bureau of Internal Revenue and evidence showing the utter impossibility of making any check on the accuracy of returns filed not only by Chinese, but by other foreign merchants in the Islands, the total lack of any evidence to the contrary, show that the Act was a fiscal measure in aid of the administration of the revenue laws and the collection of taxes, and this the court expressly found in its opinion. (R. 1184, 1199, 1202.)

B.

It was proper for the lower court to interpret the Act with reference to its purpose and the mischief it was designed to cure.

Despite the petitioners' contention that the law was absolutely specific as enacted, it is quite obvious that the phrase "books of account" needs definition. In order to reach such a definition, the court is, of course, entitled to consider the purpose and history of the Act.

Takao Ozawa v. *United States*, 260 U. S. 178.

Petitioners object to this method of interpretation. But it is submitted that under no theory of construction are the petitioners entitled to complain when the interpretation by the lower court involves not an extension of the scope of the statute to cover

actions or persons which might not otherwise have been affected, but involves construction of the statute resulting in a narrowing of its scope and a limiting of the type of books to which its provisions were to be applicable.

Gould v. *Gould*, 245 U. S. ~~251~~ 151.
United States v. *Field*, 255 U. S. 257.

Indeed in this case it was not only within the discretion of the court so to interpret the Act, but it was its duty to interpret it so as to confine it within constitutional limits.

In *Harriman* v. *Interstate Commerce Commission*, 211 U. S. 407, this court, speaking through Mr. Justice Holmes, said (p. 422):

> "If we felt more hesitation than we do, we still should feel bound to construe the statute not merely so as to sustain its constitutionality but so as to avoid a succession of constitutional doubts, so far as candor permits. *Knights Templar & Indemnity Co.* v. *Jarman*, 187 U. S. 197, 205."

See also *Federal Trade Commission* v. *Lorillard Co.*, 264 U. S. 298, 306.

That this rule has its limitations is, of course, true, but the case cited by petitioners on page 39 of their brief, *Hill* v. *Wallace*, 259 U. S. 44, 70, and the limitation specifically contended for in this case by petitioners are not applicable and have no bearing. The quotation used by petitioners when read in its context does not stand for the proposition for which they use it.

C.

The Lower Court was Bound to Interpret This Act in Accordance with Existing Law in the Philippine Islands.

It has been the practice of this and other courts to interpret statutes with reference to established legislative policy and to other statutes, in order to ascertain the intent of the legislature.

United States v. *Sweet*, 245 U. S. 563, 572-573.

In our case, the Act itself by the phrase "in accordance with existing law" strongly suggests the propriety of such a method of interpretation.

The court's opinion (R. 1181-1182) contains a reference to the established policy of the Government of the Philippine Islands looking towards the ultimate adoption of a uniform language. The court cites a considerable number of statutes illustrating that policy.

Moreover, the court gave weight to the existence of lawful regulations of the Bureau of Internal Revenue, involving the use of English or Spanish (the official languages of the Islands) in the preparing of income tax returns and of the Internal Revenue sales books required to be kept by all merchants. (R. 1198.) And it appears in the testimony that particular classes of merchants are required to keep special books and make special reports or returns or transcripts to the Bureau of Internal Revenue as aids in the collection of taxes. This is true of the wholesale dealers in leaf tobacco and of others. (R. 856, 877, 900, 902, 903-7.) A number of forms to be made out in English by various classes of merchants were attached to the Record as exhibits, but were not printed. (Ex. 14-28, R. 1054-5.)

D.

Particularly, the Interpretation of a Statute by the Highest Court of the Jurisdiction, whose Legislature Enacted it, is Binding on This Court when the Effect of Such Interpretation has been to Cure Constitutional Difficulties which Otherwise Might have Existed.

Where the interpretation of a statute by the highest court of a state does not relate to any possible conflict with a Federal statute or the Federal Constitution, it is conceived that such interpretation will always be adopted by the Supreme Court of the United States. Where, however, such a possible conflict is involved, although this Court does not deem itself bound by the lower court's construction, yet it will give great weight to it and will not lightly reverse such construction.

See *Philippine Sugar Company* v. *Philippine Islands,* 247 U. S. 385, 390.

And if the result of the lower court's interpretation is to take a statute out of the realm of constitutional doubt and make it valid, this Court, it is believed, will not consider the contention that the lower court's construction was wrong.

Petitioners object to the interpretation of the Act as a type of judicial legislation. We respectfully submit: (1) that the dividing line, if there is any, between legislation and adjudication, is so indistinct as to cast doubt on the theory of separaton of powers.

> *Oceanic Steam Navigation Company* v. *Stranahan,* 214 U. S. 320.
>
> *Ehrlich: Montesquieu and Sociological Jurisprudence,* ~~26~~ 29 Harv. L. Rev. 582, 592.

And (2) it has been held by this Court in *Londoner* v. *Denver,* 210 U. S. 373, 379, that where a state court had construed a state statute so as to bring it into harmony with the federal and state constitutions, nothing in the Fourteenth Amendment gives this Court power to review the decision on the ground that the state court exercised legislative power in construing the statute in that manner and thereby violated that amendment (p. 379):

> "The complaint in this assignment is not that the court gave a construction to the law which brought it into conflict with the Federal Constitution, but that, in construing the law so as to bring it into harmony with the Federal and state constitutions, the court so far neglected its obvious meaning as to make the judgment an exercise of legislative power. We know of nothing in the Fourteenth Amendment which gives us authority to consider a question of this kind. We think it fitting, however, to say that we see nothing extraordinary in the method of interpretation followed by the court, or in its results. Whether we should or not have arrived at the same conclusions is not of consequence."

II.

ACT 2972 IS NOT A DEPRIVATION OF LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW.

A.

The Phrase "Due Process" Takes its Meaning with Reference to the Body of Law of the Jurisdiction whose Legislature Enacted the Statute under Consideration.

It should be borne in mind that the Fifth Amendment to the Constitution does not apply to the Philippine Islands, being a limitation only on the Federal Government.

> *Capitol City Dairy Co.* v. *Ohio,* 183 U. S. 238.
> *Brown* v. *New Jersey,* 175 U. S. 172, 174.

It has been further held by this court in *Dorr* v. *United States,* 195 U. S. 138, that the Philippine Islands do not constitute an incorporated territory and that the constitutional limitations affecting Congress do not apply to the Philippines nor to its governing body, which may exercise all powers delegated by the Congress.

The Philippine Autonomy Act ("39" St. L. 545) provides "that no law shall be enacted in said Islands which shall deprive any persons of life, liberty or property without due process of law or deny to any person therein the equal protection of the laws."

It is true that this has been interpreted by this court in *Serra* v. *Mortiga,* 204 U. S. 470, 474, as extending to the Philippine Islands guarantees equivalent to the due process and equal protection clauses of the Federal Constitution. The connotation of due process, however, when applied to legislative acts depends on the body of existing law in the jurisdiction.

> *Murray v. Hoboken Land, etc., Co.,* 18 How. 272.
> *Brown v. New Jersey,* 175 U.S. 172.

The question whether the Act offends against the due process clause of the Philippine Bill of Rights, therefore, while it is to be

tested by substantially the same principles as have been applied in similar cases in this country, must be measured not as petitioners contend at page 16 of their brief by exactly the same considerations which have moved our courts in their decisions under the Fifth and Fourteenth Amendments, but rather with reference to the body of law in the Philippine Islands.

The Philippine Autonomy Act did not abrogate, but continued in effect the laws already in operation at the time of its enactment. The lower court in its opinion (R. 1198) refers to certain powers of the Collector of Internal Revenue to require books, returns, transcripts, etc., to be kept by merchants of various classes for the purpose of tax collection. Moreover, Article 33 of the Spanish Code of Commerce, continued in force in the Philippine Islands by the Autonomy Act, prescribes that all merchants shall keep certain specified books. It is submitted that these and other special provisions of the Philippine laws should be borne in mind in considering the arguments following.

B.

Any Injury or Hardship Caused by This Act Is Purely Incidental.

The statute in its terms is nothing more than a regulation of the method of carrying on one of the incidents of business. It forbids the doing of no business. It prohibits no lawful calling. Insofar as it deprives any merchants of liberty, it does so in its terms only by way of a regulation effecting at most an incidental injury to their business, and it does so in the exercise of a recognized governmental power. The petitioners' claim, that the Act in its operation would be so severe as practically to prevent them and many others from doing business, falls far short of being established by the record. It is submitted that the foregoing discussion of the facts of the case indicates not only that the petitioners' proof has failed to show the extent and gravity of the hardship which they allege will be produced by the Act 2972, but also that the weight of testimony goes to show first, that the hardship would be temporary and inconsiderable if the Act were

enforced at the present time and, second, that it would have been entirely negligible, had any effort been made in the two years which elapsed between the enactment and the effective date of the Act to prepare for compliance.

Act 2972 is a fiscal measure in aid of the administration of the tax laws. Any deprivation of liberty or property resulting from it, any hardship caused by its enforcement, would be purely incidental. An incidental deprivation of liberty or property, even of a grave kind, does not render unconstitutional an act in the exercise of the fundamental powers of the Government, such as the police power and, even more, the power of taxation.

Barbier v. *Connolly*, 113 U. S. 27.
Radice v. *New York*, 264 U. S. 292.

The foregoing cases become important because of the fact that Act 2972, in addition to being an exercise of the taxing power, also falls within the police power, because of its purpose to prevent frauds on the revenue.

That such incidental injuries as are relied on by the petitioners are not sufficient warrant for declaring unconstitutional an act in the exercise of an otherwise valid taxing power is indicated by *Brushaber* v. *Union Pacific Railroad*, 240 U. S. 1, and *French* v. *Barber Asphalt Paving Company*, 181 U. S. 324. Furthermore, in the case of *Packard* v. *Banton*, 264 U. S. 140, 145, this Court has indicated that confiscation of property would have to be patent before it would hold a statute contrary to the Fourteenth Amendment, if the limitation is an incident to the legislature's exercise of its police powers. This was a case in which it was claimed that the cost of complying with a certain regulation would be prohibitive and confiscatory. Of course, where the exercise of the police or taxing power is a mere subterfuge, the courts will look behind the form to the substance.

Child Labor Tax Case, 259 U. S. 20.
Dobbins v. *Los Angeles*, 195 U. S. 223.

The petitioners rely upon a number of cases in which interference by statute with the right of persons to engage in lawful occupations has been held invalid, but the interference in these

cases was direct, not incidental. The statute was aimed at the very thing which constituted the injury; its primary purpose incorporated the injury itself, and was not the exercise of either the taxing or the police power. Thus in *Pierce* v. *Society of Sisters*, 268 U. S. 510, the statute directly destroyed the appellant's right to earn a livelihood through conducting primary schools. In *Truax* v. *Raich*, 239 U. S. 33, the statute complained of forbade certain persons to hire more than 20 per cent of employees not qualified electors or native born citizens. The statute directly affected the liberty of persons in contracting for employment. The same thing was true in *Adams* v. *Tanner*, 244 U. S. 590, in which Mr. Justice Brandeis in a strong dissent urged that the public necessity of the Act was sufficient to support it, despite what the majority opinion considered a direct interference with the liberty of contract and freedom of occupation. *Meyer* v. *Nebraska*, 262 U. S. 390, and *Coppage* v. *Kansas*, 236 U. S. 1, dealt likewise with statutes which directly prohibited the following of a lawful occupation or directly infringed the individual's liberty to contract for employment.

The present case typifies the distinction drawn by this court. Act 2972 in its purpose and in its terms prohibits no lawful occupation, interferes with no right to engage in business in any lawful manner, prevents no contract for the keeping of books nor even requires that any books be kept. It does this not with any intent to prohibit, not with any purpose of obstruction, not with a design to interfere with lawful occupations or the manner of conducting them, but only with the intent to cure a grave defect in the exercise of the most fundamental power of Government—the power of taxation.

C.

The Requirement of Due Process Is Not a Limitation on an Otherwise Valid Exercise of the Power of Taxation.

In *Brushaber* v. *Union Pac. R. R.*, 240 U. S. 1, Mr. Chief Justice White said (p. 24):

> "So far as the due process clause of the Fifth Amendment is relied upon, it sufficies to say that there is no

basis for such reliance, since it is equally well settled that such clause is not a limitation upon the taxing power conferred upon Congress by the Constitution; in other words, that the Constitution does not conflict with itself by conferring upon the one hand a taxing power and taking the same power away on the other by the limitations of the due process clause. [Citing cases.]"

The same rule as to the effect of the due process clause has been applied by this court in deciding that the Fourteenth Amendment was not designed to subvert the systems of general or special taxation erected by the various states.

French v. *Barber Asphalt Paving Co.* (supra), 181 U. S. 324.

III.

ACT 2972, AS LIMITED BY THE SUPREME COURT OF THE PHILIPPINE ISLANDS, DOES NOT OFFEND AGAINST THE EQUAL PROTECTION CLAUSE, EITHER IN LANGUAGE OR IN OPERATION.

A.

Neither the Wisdom of the Act, nor the Motives of the Legislature, Undisclosed in Its Language or Operation, Are Material Here.

The purpose of the Act is patent from the evidence in the record showing its necessity, and the history of its passage, as well as from the decision of the lower court. The record, moreover, is bare of proof that its purpose, as claimed by the petitioners, was to destroy the business of the Chinese merchants—bare even of proof that such was the motive of the Legislature at the time of its passage. It is doubtless true that the presence in the Philippines of a great number of merchants, Chinese and others, whose books were kept in language incomprehensible to the agents of the Bureau of Internal Revenue, was the impelling necessity for the Act, but if this be ground for a claim of unconstitution-

ality, then every act made necessary by the situation, circumstances, or conduct of any class of our population would likewise fall. The mere fact that a condition calling for statutory remedy is caused in large measure by a certain class of the population, does not tie the hands of the Legislature. Thus, in *Soon Hing* v. *Crowley*, 113 U. S. 703, it appeared that the Chinese population of San Francisco were largely responsible for a condition which brought about the enactment of a municipal ordinance prohibiting the washing or ironing of clothes between 10 P. M. and 6 A. M. or on Sundays, yet this Court sustained the constitutionality of that ordinance, despite the fact above-mentioned, and despite the contention that the ordinance in question was inspired by motives hostile to the Chinese. The Court said (p. 710):

> "There is nothing, however, in the language of the ordinance, or in the record of its enactment, which in any respect tends to sustain this allegation [that hostility to the Chinese was its motive]. And the rule is general with reference to the enactments of all legislative bodies that the courts cannot inquire into the motives of the legislators in passing them, except as they may be disclosed on the face of the facts, or inferrable from their operation, considered with reference to the conditions of the country and existing legislaiton. * * * The diverse character of such motives, and the impossibility of penetrating into the hearts of men and ascertaining the truth, precludes all such inquiries as impracticable and futile."

The following sentence in the Court's opinion is significant:

> "And in the present case, even if the motives of the supervisors were as alleged, the ordinance would not thereby be changed from a legitimate police regulation, unless in its enforcement it is made to operate only against the class mentioned; and of this there is no pretense."

The above case is to be contrasted with *Yick Wo* v. *Hopkins*, 118 U. S. 356, in which the actual operation of an ordinance was held to deprive the complainant of the equal protection of the laws.

See also *Terrace* v. *Thompson*, 263 U. S. 197, in which a statute disqualified all aliens who had not in good faith declared their intention of becoming citizens of the United States, from holding any interest in land. This Law, like a similar law in California, was notorious as the "Anti-Japanese Act," yet the Court held its classification, based as it was on eligibility and purpose to naturalize, to be constitutional and not a deprivation of equal protection of the laws.

The record is bare, furthermore, of any suggestion that in the administration of Act 2972 there appeared or would appear any hostility to the Chinese or any other classes, or any discrimination against them. Indeed, the Supreme Court of the Philippine Islands, on pages 1200-1201 of the record, virtually promised that there would be no unfair treatment of the Chinese under this Act.

In view, then, of the familiar rules above stated, it is conceived that the numerous resolutions of Chambers of Commerce and other bodies, and other documents presented by the petitioners as exhibits in the record, and criticising the wisdom of Act 2972, are totally immaterial.

B.

The Requirement of Equal Protection Forbids, Not Classification, but Only Arbitrary Classification.

It is hard to conceive of any statute which to some extent does not involve a classification.

That classification is not forbidden is too elementary to require citation of cases. That a classification substantially identical in principle with that involved in Act 2972 is valid has been frequently held by the courts.

Soon Hing v. *Crowley* (supra), 113 U. S. 703.
Terrace v. *Thompson* (supra), 263 U. S. 197.
Porterfield v. *Webb*, 263 U. S. 225.

The above cases all involved a Chinese or Japanese population under facts strikingly similar in principle to those urged by the petitioner in the case at bar.

The distinction between statutes which are unconstitutional under the equal protection clause and those which are valid, seems to depend on whether the classification which they create is arbitrary and without foundation or reason.

Royster Guano Co. v. *Virginia*, 253 U. S. 412, 415.

In this case the language of Mr. Justice Pitney, in emphasizing the latitude of discretion allowed a legislature in the classification of property for purposes of taxation, and in the granting of partial or total exemptions upon grounds of policy, is significant. See also the language of this Court with reference to the power of taxation, and the necessary classifications thereunder, in *Barclay & Co.* v. *Edwards*, 267 U. S. 442, 450. The foregoing two cases, reaching opposite results upon the constitutionality of the statutes involved, illustrate the distinction which the respondents make.

See also *Packard* v. *Banton* (supra), 264 U. S. 140.

Such cases as *The King* v. *Lau Kiu*, 7 Hawaiian Rep. 489, are obviously distinguishable. In that case the statute forbade the keeping of books in any languages except Hawaiian, English, or any European language. Obviously, when books could be kept in Serbian, Lithuanian, the dialects of Russian, etc., etc., the statute could have no helpful relation towards the enforcement of any revenue laws; in fact, there was nothing to indicate that it was so intended, whereas, the Chinese in Hawaii, and the Japanese, were obviously and directly the object of attack. In any event, the persuasive effect of a decision by the Hawaiian Court is not great under the circumstances of that case. Moreover, the requirement in the Hawaiian statute, that no person who did not keep his books in the required languages could obtain the license requisite to do business, rendered that statute a direct interference with the liberty of the individual within the rule of *Meyer* v. *Nebraska* (supra), 262 U. S. 390.

The petitioners have cited no cases, and it is believed that they can cite none, in which a classification similar to that in the case at bar, has been held unconstitutional.

That the classification found in Act 2972 is a reasonable one, bearing a responsible relation to the purpose of the Act, can hardly be gainsaid. The Act, indeed, contains only a very limited measure of classification. Within its terms it is of absolutely universal application. It covers all merchants within the Philippine Islands, and that such a classification is reasonable is beyond cavil. In covering all merchants it uses an irreducible minimum of classification, below which the Legisltaure could not have gone, and at the same time have effectuated the purpose for which the Act was intended.

Moreover, that the operation of the Act bears harder upon one part of the persons affected by it than on the others,—that their circumstances are such that compliance would be a greater hardship on them than on others, is totally immaterial.

Soon Hing v. *Crowley* (supra), 113 U. S. 703.
Terrace v. *Thompson* (supra), 263 U. S. 197.

It cannot be too strongly emphasized that the test of a classification is not reasonableness, in the sense of wisdom or unwisdom, hardship or lack of it, but is arbitrariness,—lack of a reasonable basis for the classification.

Terrace v. *Thompson* (supra), 263 U. S. 197.
Royster Guano Co. v. *Virginia* (supra), 253 U. S. 412.
Packard v. *Banton* (supra), 264 U. S. 140.

A case particularly significant with reference to the taxing power is *Green* v. *Frazier*, 253 U. S. 233.

It being established on the one hand that an Act will not be held violative of equal protection because of unreasonableness in its terms or operation which falls short of being arbitrary, on the other hand it is equally clear that any reasonable basis for the classification is enough to make a statute constitutional. The court will not dissect a statute in order to discover to what precise extent it is actually calculated to carry out the Governmental purpose of police power or taxation which it was designed to effect.

Terrace v. *Thompson* (supra), 263 U. S. 197.

Act 2972 contains no classification beyond the inclusion of all merchants and the specification of certain languages. That an act affecting all merchants in a given territory does not constitute arbitrary classification is elementary; that the choice of languages is not an arbitrary one likewise seems obvious. English and Spanish are the official languages of the Islands. As to the native dialects, it is surely not unreasonable or arbitrary for the Government of the Philippine Islands to exert itself, in behalf of its own subjects, to the small extent required to examine their books in the native languages. The record shows how easy a matter this is. On the other hand, it is hardly reasonable to require the Philippine Government to serve the convenience of every foreigner doing business in the Islands by employing an accountant who can examine books in that foreigner's language. It should be emphasized again that the Act itself bears not only on the Chinese merchants but on Germans, Japanese, Syrians, Hindus and any other foreign merchants in the Islands. The mere fact that the Chinese form a large proportion of these foreign merchants and do a large proportion of the business of the Islands falls far short of making the Act a discrimination against them. It only goes to prove the greater necessity for the Act.

IV.

ACT 2972 AS LIMITED BY THE SUPREME COURT OF THE PHILIPPINE ISLANDS IS SUFFICIENTLY DEFINITE AND CERTAIN IN ITS REQUIREMENTS.

If the Act was indefinite as passed, it has been cured by the interpretation of the lower court, and there remains no constitutional question here.

> *Southeastern Express Company* v. *Robertson*, 264 U. S. 535.

In *Pierce Oil Co.* v. *Hopkins*, 264 U. S. 137, the appellants attacked a certain law requiring retailers of gasoline to collect from purchasers, in addition to the usual charge, the sum of

one cent per gallon. In answer to the argument of uncertainty and indefiniteness, Mr. Justice Brandeis said:

> "The argument that there inheres in the statute such uncertainty as to render it a nullity is answered by the fact that since the judgment was entered in the trial court all uncertainty has been removed by the decision of the highest court of the State in *Standard Oil Co.* v. *Brady*, 153 Ark. 114. There, the Act was construed as requiring sellers to collect and pay the tax only on such gasoline as they had reason to believe the purchasers from them will use in motors on the highways."

It hardly seems to need argument that the statute as interpreted by the Philippine Supreme Court is completely definite in its indication as to what books the taxpayer will be required to keep in the enumerated languages. The taxpayer can always have access to the regulations of the Bureau of Internal Revenue and will find no difficulty in determining when he is complying with the law and when he is not.

It would be neither possible nor desirable to designate specific books to be kept, by merchants doing many different kinds of business, in English, Spanish or one of the native dialects. As interpreted by the Supreme Court of the Philippines, the Act becomes as specific and as definite as it could reasonably be.

The Act as interpreted is no less definite than the various revenue acts passed by Congress.

> *Revenue Act of 1918, Public No. 254, 65th Congress, Section 1305.*
> *Revenue Act of 1921, Public No. 98, 67th Congress, Sections 1300 and 1303.*
> *Revenue Act of 1924, Public No. 176, 68th Congress, Section 1002.*
> *Revenue Act of 1926, Public No. 20, 69th Congress, Section 1102-(a).*

In all these Acts the wording is:

> "Every person * * * shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations as the Commissioner,

with the approval of the Secretary, may from time to time prescribe."

And even the regulations of the Bureau of Internal Revenue in this country are no more specific than the Act as interpreted by the Supreme Court of the Philippines.

Regulations 45, relating to income tax, etc., under the Revenue Act of 1918, Article 24.
Regulations 62 under Revenue Act of 1921, Articles 24 and 1711.
Regulations 65, relating to income tax under Revenue Act of 1924, Articles 24, 1321, 1611-18.

V.

THE TREATY BETWEEN THE UNITED STATES AND CHINA ASSURING TO CHINESE NATIONALS "MOST FAVORED NATION" TREATMENT HAS NO BEARING ON THIS CASE.

Article 3 of the treaty reads as follows:

> "If Chinese laborers, or Chinese of any other class, now either permanently or temporarily residing in the territory of the United States, meet with ill treatment at the hands of any other persons, the Government of the United States will exert all its powers, to devise measures for their protection, and to secure to them the same rights, privileges, immunities and exemptions as may be enjoyed by the citizens or subjects of the most favored nation, and to which they are entitled by treaty."

No argument made by the respondents herein implies that the rights of the petitioners are less because they are aliens and subjects of the Emperor of China.

The treaty, moreover, refers to Chinese "now either permanently or temporarily residing in the territory of the United States." There is no proof that these petitioners or any of the Chinese in the Islands were residing in the territory of the United States or in the Philippine Islands on November 17, 1880, the date of the Treaty.

The Treaty protects such Chinese as "meet with ill treatment at the hands of any other persons." It can hardly be presumed that an act of the Philippine Legislature would be classed as "ill treatment" intended by the Treaty.

The Treaty provides that for Chinese who are ill treated as above, "the Government of the United States will assert all its powers to devise measures for their protection and to secure to them the same rights, privileges, immunities and exemptions as may be enjoyed by the citizens of the most favored nation, and to which they are entitled by treaty." The most that could be contended is that this treaty constitutes a moral obligation on the Congress of the United States to nullify, as it has authority to do, Act 2972 of the Philippine Legislature. Certainly, it has no relation to the constitutionality of that Act under the Philippine Bill of Rights or the Constitution of the United States. The petitioners' contention amounts to this: that the Supreme Court of the United States is bound by treaty to declare the Act unconstitutional.

There is no proof in the Record as to whether the right to keep one's books in one's own language is a right, privilege, immunity or exemption enjoyed by the citizens or subjects of any nation to which by treaty with the United States they are entitled.

Furthermore, the phrase "now either permanently or temporarily residing in the territory of the United States," written in 1880, when the Philippine Islands were not such territory, raises a serious question as to whether this treaty would be applicable in any event to the Philippines.

Petitioners cited the case of *Yick Wo* v. *Hopkins,* 118 U. S. 356, 369, as authority for the proposition that this treaty is applicable, but the case will not bear this construction. All that it holds is that the Chinese are entitled no less to the equal protection of the laws than American citizens. Moreover, it must be emphasized that although this Court in the *Yick Wo* case held an ordinance of the City of San Francisco unconstitutional, it did not so hold because it violated the equal protection clause. The reason for holding the ordinance unconstitutional was that it vested, without judicial review, arbitrary powers in administrative officers, in violation of the due process clause. It also appeared

that the administration of the ordinance, not the ordinance by its terms, was violative of the equal protection clause. Of course, if it should appear that the law is administered with hostility or discrimination against the Chinese, or against any other merchants of the Philippine Islands, a remedy exists under the principle laid down by this Court in *Sioux City Bridge Co.* v. *Dakota County*, 260 U. S. 441.

VI.

ACT 2972 IS A PROPER EXERCISE OF THE TAXING POWER AND OF THE POLICE POWER.

Sections 7 and 8 of the Organic Act of the Philippine Islands (39 Stat. 545) read in part as follows:

> "That the legislative authority herein provided for has power when not inconsistent with this Act to amend, alter, modify or repeal any law, civil or criminal, continued in force by this Act as it may from time to time see fit.
>
> "This power is specifically extended, with the limitations herein provided, as to the tariff and to all laws relating to revenue and taxation in effect in the Philippines."

These provisions of the Organic Act put into effect in the Philippines a rule similar to the familiar doctrine that no authority is necessary to enable state legislatures to pass whatever laws they deem proper so long as they avoid conflict with the Constitution.

The power of taxation, then, is fully vested in the Philippine legislature subject to the limitations of the Bill of Rights contained in the Philippine Autonomy Act, supra, and the power to tax is as fundamental as the police power. Historically, it is even superior. This has been reiterated by this Court in many cases since *McCulloch* v. *Maryland*, for example, *Loan Association* v. *Topeka*, 20 Wall. 655, 663; *Barclay & Co.* v. *Edwards*, 267 U. S. 442, 450.

CONCLUSION

In view, therefore, of the purpose served by the Act, the mischief it was designed to cure and its necessity both in aid of the collection of taxes and in guarding against frauds on the revenue; in view of the petitioners' failure to show that it deprived any person of property or liberty without due process of law, or that it constitutes arbitrary or even unreasonable discrimination; in view of its definiteness and of the fact that it does not even remotely conflict with any treaty between the United States and China, it is respectfully submitted that the Act is constitutional and valid.

Accordingly, the respondents respectfully submit that the judgment of the Supreme Court of the Philippines should be affirmed with costs.

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